

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ABOLFAZL HOSSEINZADEH,

11 Plaintiff,

12 v.

13 BELLEVUE PARK HOMEOWNERS
14 ASSOCIATION *et al.*,

15 Defendants.

16 CASE NO. C18-1385-JCC

17 ORDER

18 This matter comes before the Court on Defendant Bellevue Park Homeowners
19 Association's motion for a Federal Rule of Civil Procedure 35 examination and a limited
20 extension of discovery (Dkt. No. 132). The Association wants Dr. Michael K. Friedman to
21 examine Plaintiff in-person pursuant to Rule 35. (*See* Dkt. No. 132 at 1.) The Association argues
22 that there is good cause for a Rule 35 examination because Plaintiff has placed his mental health
23 at issue, (*see id.* at 8–9), and Dr. Friedman cannot accurately perform an examination over video,
24 (*see* Dkt. No. 134 at 2–3).

25 Plaintiff agrees that there is good cause for a Rule 35 examination and “wants to
26 complete his Rule 35 examination as soon as possible.” (*See* Dkt. No. 146 at 2.) However,
Plaintiff believes that a face-to-face examination would violate the restrictions Washington has
placed on businesses due to the COVID-19 pandemic. (*See id.* at 2–3.) Specifically, Plaintiff

1 believes that Dr. Friedman’s proposed examination would violate “the standard for providing
2 professional services in King County” because the examination would take longer than 30
3 minutes. (*See id.* at 3.)

4 The parties dispute whether Dr. Friedman would be providing a “professional service” or
5 an “essential service.” (*See id.*; Dkt. No. 152 at 2–3.) Prior to June 19, 2020, that distinction
6 might have made a difference: King County was in modified Phase 1 of Washington’s Safe Start
7 reopening plan, *see Safe Start*, King County, <https://kingcounty.gov/elected/executive/constantine/covid-response/safe-start.aspx> (last visited Aug. 20, 2020); (Dkt. No. 146 at 28), indoor
8 professional services were limited to 30 minutes for customers, *see Off. of the Governor, Safe*
9 *Start Washington* at 9 (Aug. 6, 2020), <https://www.governor.wa.gov/sites/default/files/SafeStartPlanBasedReopening.pdf>, and Dr. Friedman likely could not complete his examination in 30 minutes,
10 (*see Dkt. No. 134 at 2*) (explaining that the Minnesota Multiphasic Personality Inventory consists
11 of more than 550 true/false questions). But as of June 19, King County is in Phase 2 of
12 Washington’s reopening plan. *See Safe Start, supra.* Under Phase 2, an employer may provide
13 indoor professional services without time limits so long as the employer complies with certain
14 requirements. *See Safe Start Washington, supra*, at 10. Among other things, an employer must
15 ensure that employees and customers wear facial coverings in most circumstances, keep
16 customers and employees six feet from one another unless strict physical distancing is not
17 feasible for a specific task, and follow the cleaning guidelines set by the Centers for Disease
18 Control and Prevention. *See id.* at 5–7.

21 Dr. Friedman’s proposed examination meets these requirements. The examination would
22 take place at MACHAON Medical Evaluations. (Dkt. No. 134 at 2.) MACHAON “is taking a
23 pro-active approach . . . in accordance with . . . [CDC] & University of Washington guidelines to
24 keep [its] Examinees and staff at a low risk of exposure to communicable diseases.” (*Id.* at 14.)
25 Those precautions include requiring all participants in an examination to wear a mask and
26 gloves; maintaining physical distancing by limiting the number of people in MACHAON’s

1 reception area to two people; screening examinees for COVID-19 symptoms and stopping an
2 examination if an examinee has any symptoms; and cleaning the reception area and lobby after
3 each examination. (*Id.*)

4 Given that Dr. Friedman's proposed examination complies with Washington's
5 requirements for professional services, the Court GRANTS the Association's motion (Dkt. No.
6 132) because there is good cause for a Rule 35 examination and good cause to modify the
7 Court's scheduling order to allow for the examination. The Court hereby AUTHORIZES a Rule
8 35 examination and EXTENDS discovery for that purpose only. The Court ORDERS Plaintiff to
9 appear at MACHAON within 30 days of the date of this order for an in-person Rule 35 mental
10 examination conducted by Dr. Friedman. The Court further ORDERS the parties to meet and
11 confer within seven days of the date of this order about the precise date and time for Plaintiff's
12 examination.

13 DATED this 21st day of August 2020.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE